1944.

File No. Tenancy I
44

Legal Department
B **BRANCH**

Subject:— Rules and Notifications under the Bombay Tenancy Act 1939.

E
page-5
1944

File No Tenancy II/44

Jan. 194 e.

219-B

Office of the R.L.A.

Superintendent
D Branch ,Legal Department,

The first question referred to the R.L.A. is whether a landlord can apply for eviction under section 24 of the Bombay Tenancy Act, 1939 , on the ground that the tenancy has terminated under sub-section (2) of section 5, at any time after the end of the revenue year during which the tenancy is alleged to have terminated. Section 24 of the Bombay Tenancy Act, 1939. does not appear to be intended to provide for the procedure where a landlord seeks to obtain possession. Section 24(1) refers to a person entitled to possession of any land or dwelling house under any of the provisions of that Act.The Act was enacted, as declared in the preamble, to provide for the protection of tenants of agricultural lands in the Province of Bombay.The scheme of the Act also is to confer upon tenants, inaddition to any rights or privileges enjoyed by them under any other law, (vide section 2 6) certain rights. For instance, section 4(2) enables a person who is deemed a protected tenant to recover possession of his land in certain circumstances. Section 5(2) provides that the tenancy of any land held by a protected tenant shall not be terminated except in cases the ~~xxxx~~ specified therein. Then section 7(2) provides for a tenant " being entitled to recover possession " of his land, which had been taken possession of by a landlord under sub.section (1), if he does not use it for the purpose for which he took it within 1 year or ceases to use it for that purpose within 12 years , from the date of taking such possession. See also section 11 which speaks of rights conferred on a protected tenant by the Act. As for the rights of the landlord, they are curtailed by the Act, and in so far as not curtailed are exercisable under the ordinary law. The reference to the landlord taking

possession of land in sub-section (2) of section 7 does not make it clear that he takes possession under the provisions of the Tenancy Act, while section 20 provides that "where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceeding to eject the tenant etc." The procedure for such suits is through the Civil Courts and for such proceedings as already prescribed in the Mamlatdars' Courts Act, 1906, Thus section 24 of the Bombay Tenancy Act may plausibly be held as providing for the procedure where an evicted tenant or his heirs, widow or survivor of a joint tanancy but not a landlord seeks to obtain possession of any land. The question raised by the R.D. does not therefore seem to survive. It would however make for administrative certainty to amend section 24 and insert the words "other than a landlord " after the word "persons".

2. The second matter referred to the R.L.A. is the scrutiny of the draft notification at page 44. The draft provides that the Mahalkari Mamlatdar shall record his finding whether the applicant is or i s not entitled to the possession of the land or the d welling house and if he records a finding in the affirmative, he shall give reasonable time to the opponents to clain relief under section 20, if admissible. As already observed a landlord cannot, it seems, apply under the Tenancy Act to obtain possess ion of the land or dwelling house. No such rule need , therefore, be framed.

Id/-

P.N.H.

19-2-44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1360 , dated the 21st February 1944.

VVK. 16/7/56/

5C.

Office of the R.L.A.

Having regard to the scheme of the Bombay Tenent Act, the R.L.A. is still inclined to the view that section 24 could not be interpreted to cover the case of the landlord and give him the ritht to evict his tenant by application to the Mamlatdar. But admittedly the position is not very clear, especially in view of the explanation vouchsafed by the Revnue Minister in the Council debate that the objection of substituting the word 'possession' for the word 'tenant' was to give the landlord the provilege of availing himself of the provisions of section 24. It is however a cardinal principle of interpretation of statutes that the proceedings of the Legislature cannot be referred to in the judicial interpretation of a statute and it is doubtful if the Revenue Minister 's explanation would carry any weitht in a Court of law. Since the point is shrouded in doubt it seems all the more necessary to clarify the position by a mending section 24 one way or the other. It is for Revenue Department to decide whether the landlord should or should not have the right of eviction under section 24.

Id/-

P.N.M.

26/4/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3132 dated the 26th April 1944.

VVK. 16/7/56/

SC.

Office of the R.L.A.

The proposal in these papers is to invest the P.A. to the Collector of Dharwar with the power to hear appeals under section 24(3) of the Bombay Tenancy Act, 1939 in respect of the whole district. Appeals under that section lie to the Collector. By virtue of section 2(13) of the Act the word "Collector" would have the same meaning as it has in the Bombay Land Revenue Code, section 8 of which indicates that the Collector is the officer appointed as such by the Provincial Government in each district being subordinate to the Commissioner of his Division. An Assistant or Deputy 'Collector' but by virtue of section 10 of the Code is authorized to exercise all the powers conferred upon a Collector by the Code or any other law for the time being in force so far as regards the taluka or talukas in his charge. The Bombay Tenancy Act can plausibly be considered as a law ejusdem generis with the Land Revenue Code and as attracting the operation of section 10 of the Cod . (See also section 28 of the Tenancy Act). It is not, therefore, necessary expressly to deletate to an Assistant or Deputy Collector the powers of the Collector under section 24(3) of the Tenancy Act. In the absence, however, of any provision enabling it in that behalf, Government cannot authorise any other officer to edercise those powers in any area of the district if that officer is not an Assistant or Duputy Collector for the area in question.

Id/-

P.N.M.

23/3/44.

Remembrancer of Legal Affairs.

U.R to H.D No. 2183 , dated the 23rd March 1944.

VVK• 16/7/56/

Office of the R.L.A.

The draft notification at page 5 ante, as slightly amended, is in order.

2. Although the R.D. notification No.1118/24(c) dated 31st March 1941, appointing the awal-karkuns and extra awal-karkuns in all talukas to perform the duties of a Mamlatdar has been issued under section 2(5) of the Bombay Tenancy Act, 1939 , before that section was extended to and brought into force in the districts of Ratnagiri and Kolaba , the notificaion would by virtue of section 22 of the Bombay General Clauses Act, 1904 take effect in those districts as soon as that section is extended to and brought into force in those districrs. No separate notifictaion for the purpose is necessary inrespect of the two districts.

Id/- P.M.M.
dt/- 31/3/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 2477 , dated the 1st April 1944.

VVK. 16/7/56/

5C.

Office of the R.L.A.

R.L.A. cannot usefully add any thing to his previous opinions on the interpretation of section 24 of the Bombay Tenancy Act, 1939 . It is now a question of policy whether or not the landlord should have the benefit of the provisions of section 24 of the Act.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D No. 365 /Confl. dated the 30th November 44.

VVK. 16/7/56/

5C.